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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. ~~405~~. 123

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, AND CLAY TALLMAN, COMMISSIONER OF THE GENERAL LAND OFFICE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA *EX REL.* ALLEN L. NEWTON.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION TO AFFIRM AND BRIEF OF DEFENDANT IN ERROR.

ALEX. BRITTON,
F. W. CLEMENTS,
Attorneys for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 405.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, AND CLAY TALLMAN, COMMISSIONER OF THE GENERAL LAND OFFICE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA *EX REL.* ALLEN L. NEWTON, DEFENDANT IN ERROR.

To the Solicitor General, respecting the plaintiffs in the above-entitled case, notice is hereby given that a motion to dismiss the writ of error or affirm the judgment of the court below with costs will be presented to the United States Supreme Court on March 1, 1920.

ALEX. BRITTON,
F. W. CLEMENTS,
Attorneys for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1919.

No. 405.

FRANKLIN K. LANE, *Secretary of the Interior, and* CLAY TALLMAN, *Commissioner of the General Land Office, Plaintiffs in Error,*

vs.

THE UNITED STATES OF AMERICA *ex Rel.* ALLEN L. NEWTON, *Defendant in Error.*

MOTION TO DISMISS OR AFFIRM.

Comes now the defendant in error and moves the court to dismiss the writ of error or affirm the judgment of the court below with costs, upon the ground that the questions on which the writ of error was taken are fully disposed of by the decision of this court in the case of Lane, Secretary of the Interior, *vs.* Hoglund (244 U. S., 174), and that it is manifest the writ of error can be for delay only, and therefore further argument is unnecessary.

ALEX. BRITTON,
F. W. CLEMENTS,
Attorneys for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1919.

No. 405.

FRANKLIN K. LANE, *Secretary of the Interior, and* CLAY TALLMAN, *Commissioner of the General Land Office, Plaintiffs in Error,*

vs.

THE UNITED STATES OF AMERICA *ex Rel.* ALLEN L. NEWTON, *Defendant in Error.*

In support of the motion to dismiss or affirm a short statement is necessary.

The land here involved is within the Seattle Land District in the State of Washington. Plat of survey of the township was filed in the district land office September 8, 1904, whereupon the defendant in error made his homestead entry, and thereafter, in accordance with due notice by publication, submitted proof in consummation of his entry, paid the purchase price, and the receiver's receipt on final entry was issued to him November 21, 1904 (Record, page 2).

At the expiration of two years from the issuance of receiver's receipt on final entry no contest, protest, or other proceeding had been instituted against defendant's entry, and he thereupon became entitled to patent under the proviso to section 7 of the act of March 3, 1891 (23 Stats., 1095-1099, Record, page 2).

On November 27, 1908, over four years after the issuance of the receiver's receipt, proceedings were instituted for the cancellation of defendant's entry for failure to comply with the homestead law in the matter of residence and cultivation, as a result of which defendant's entry was ordered cancelled March 23, 1912 (Record, page 2).

It is our contention that this case is controlled by the decision of this court in the case of Lane, Secretary of the Interior, *vs.* Hoglund (244 U. S., 174). In this connection it should be said that on the advice of the Solicitor for the Interior Department the petition for mandamus was not earlier filed in defendant's behalf, but following the decision of this court in the Hoglund case a petition was filed with the Secretary of the Interior for the reinstatement and patenting of defendant's entry, and upon said petition the Secretary of the Interior, by an order dated May 14, 1918, addressed to the Commissioner of the General Land Office, ordered the reinstatement and patenting of defendant's entry (Record, pages 4-5).

Acting under this direction, the Commissioner of the General Land Office reinstated defendant's entry, and on June 4, 1918, approved the same for patent, and the patent was about to issue when, on the request of the Department of Justice, the issuance of the patent was withheld, and it became necessary thereupon to file these proceedings in mandamus.

To the rule that issued answer was made, to which a demurrer was filed, and on hearing the demurrer was sustained with judgment for the defendant in error. The case was thereupon carried to the Court of Appeals of the District of Columbia, in which the judgment of the Supreme Court of the District sustaining the demurrer was affirmed with costs, and the case is now further prosecuted to this court upon a writ of error.

It will be seen that the plaintiffs in error, when uncontrolled, awarded to the defendant his right to a patent on

his homestead entry as sought in these proceedings; that when, thereafter, under the advice of the Department of Justice, the formal issuance of the patent was withheld, making these proceedings necessary, the Supreme Court of the District of Columbia, and again the Court of Appeals of the District of Columbia, each in turn, sustained the claim of the defendant in error and held the case controlled by the decision of this court in the Hoglund case. This latter case was presented at great length in this court and the opinion fully disposes of the contentions sought to be raised on the present writ of error. It would seem, therefore, that further time should not be consumed in a further hearing of this matter, and that summary action is fully justified.

ALEX. BRITTON,
F. W. CLEMENTS,
Attorneys for Defendant in Error.